IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.205 OF 2003

1. Shri Lino Francis D'Souza;

2. Smt. Fatima D'Souza,

both major of age,
residents of Mazel Waddo,
Assagao, Bardez, Goa ... PETITIONERS

VERSUS

1. Smt. Virginia Fernandes,
major, resident of
Mazel waddo, Bardez,Goa;

2. The Administrative Tribunal
Goa at Panaji, Goa;

3. The Dy. Collector & S.D.O.,
Mapusa Sub-Division,Mapusa;

4. Joint Mamlatdar of Bardez-I
Mapusa, Goa ... RESPONDENTS.

Shri J.P. Mulgaonkar, Advocate for the Petitioners.

Shri S.D. Lotlikar, Sr. Advocate, with Shri A.D. Bhobe, Advocate,for the Respondent No.1.

CORAM : F.I. REBELLO,J.

DATED : JUNE 19, 2003.

ORAL ORDER

The Petitioners have invoked the extraordinary jurisdiction of this Court both under Articles 226 and 227 of the Constitution of India. The challenge by the Petitioners is to the Orders of the Tribunal. Considering that what the Petitioners have invoked is a purely exercise of supervisory

jurisdiction under Article 227 of the Constitution of India.

2. The Respondent No.1 filed a suit before the trial Court wherein apart from the Petitioners herein the mother of Petitioner No.1 was a party. In that suit the mother of Petitioner No.1 filed a statement admitting the claim of the Respondent No.1 herein. The Petitioners, however, claim that they are mundkars and consequently an issue was framed and referred under the provisions of the Mundkar Act to the Mamlatdar who is the Authority under the Act.

3. The Mamlatdar in his findings on the issue on appreciation of the evidence recorded a finding that the Petitioners herein are not the mundkars. An appeal was preferred against he said Order. The appellate Tribunal also by Order of 8th December 2002 dismissed the appeal. Revision preferred against the said Order was dismissed by Order dated 27-1-2003. The Tribunal whilst dismissing the revision in paragraph 6 observed that the only ground on which the judgment is challenged is that the Respondent No.4 had decided the case after the expiry of one month as per the direction of the Minister of Revenue as per Order dated 15-9-1999. The learned Tribunal found no merit in

this submission and accordingly rejected that contention. The learned Tribunal in paragraph 7 specifically set out that as no other ground has been raised dismissed the revision application.

4. At the hearing of this Petition on behalf of the Petitioners, it is pointed out that they had applied for examining witnesses which opportunity was not given to them. It is also contended that they stayed away from the proceedings as by then the time for disposal of the proceedings before the Mamlatdar had expired. It is contended that the fourth Respondent was functus officio and could not have disposed of the said proceedings. I have had the benefit of the Roznama entries placed before me. It is no doubt true that in the revision preferred before the Minister the matter was remanded for certain directions. However, what can be seen is that on 2-12-1999 the examination-in-chief of Petitioner No.2 was continued and completed and cross-examination partly had commenced. At that time on behalf of the Petitioners, it was submitted that an application for examining witnesses had been filed and the say of the Respondent No.1 was kept for the afternoon session. In the afternoon session, the application for summoning witnesses was allowed with certain

directions as Respondent No.1 gave no objection for summoning the witnesses. The record further shows that on 6-12-1999 the cross-examination of applicant no.2 was completed and the matter was kept for examination of the witnesses to be examined on behalf of the Petitioners herein. Affidavit of the Talathi was filed. One of the witnesses present was not examined by the Petitioners. Request was made on behalf of the Petitioners by their Advocate to adjourn the matter at 3 o'clock. The matter was so adjourned. In the afternoon session, Advocate for the Petitioners made statement that the Petitioners could not get their witnesses and moved an application for extension of time to procure other two witnesses on the next date of hearing. By a speaking Order the Mamlatdar closed the evidence of the Petitioners and proceeded to record the evidence of the Opponent. On behalf of the Petitioners time was taken for cross-examining the Opponent which was completed on 14-12-1999. On 16-12-1999 Respondent No.1 closed the evidence and the matter was posted for final arguments on 22-12-1999. Thereafter there are some adjournments.

5. When the matter came up on 12th January 2000, on behalf of the Petitioners their Advocate raised a strange contention that the fourth

Respondent becomes functus officio and as such he was not participating in the proceedings. Thereafter, the learned Mamlatdar after hearing the Counsel for Respondent No.1 adjourned the matter for orders and the orders subsequently came to be passed.

6. The Petitioners and their Advocates who appeared before the fourth Respondent participated in the proceedings till the evidence of the Respondent No.1 was completed. Merely because of some intervening circumstance whereby the matter could not be concluded does not really mean that the fourth Respondent had become **functus officio.** The evidence had been completed within the time as contained in the Order of the Revenue Minister. All that was required was the hearing of the arguments. The Petitioners were fully aware of the consequences of not being present. Apart from that what is clear from the evidence as marshalled by the fourth Respondent is that the Petitioner No.1 claimed that he was residing in the suit house with his mother. In other words, it is the mother who could have claimed mundkarship. The mother then was still alive. The mother in the suit has not claimed any such right. The mother later expired. The mother in fact admitted the case of the Respondents. An

issue of mundkarship as framed really could not have arisen unless the Petitioners had independently claimed right of mundkarship. Documentary evidence was produced before the Mamlatdar which has been appreciated and the evidence has been recorded that the Petitioners herein were not the mundkars. The appellate Court has concurred with the said findings. The findings were not challenged before the Tribunal where the only contention raised was that the fourth Respondent becomes functus officio.

7. In my opinion, the hearings were concluded by recording the evidence within the period directed by the Revenue Authority. In these circumstances, it cannot be said that the Revenue Authority has become functus officio. Even otherwise, there was no ground for the Petitioners not to appear, as they had cross-examined the Respondents. Even before the revisional authority the findings have not been challenged. In my opinion, therefore, this would not be a fit case for this Court to interfere in exercise of its extraordinary jurisdiction under Article 227 of the Constitution considering the findings of fact recorded and that sufficient opportunity had been given to the Petitioners.

In the light of the above, the Petition is dismissed. There shall be no order as to costs.

Considering that the matter is an old matter, parties are directed to appear before the trial Court on 1st July, 2003 at 10.20 a.m. for further directions.

F.I. REBELLO,J.

ac.